

**From:** Dave.Pickens@sun.com@inetgw  
**To:** Microsoft ATR  
**Date:** 12/21/01 6:24pm  
**Subject:** Microsoft Settlement

To Whom It May Concern:

I wish to register my disagreement with the Stipulation and Revised Proposed Final Judgment in re: United States of America v. Microsoft Corporation. I understand that under the Tunney Act, I as an American Citizen have the ability to comment and wish to do so.

I've been in the information technology field since the late 1970's... I had just started my career when Microsoft was founded and therefore have seen the world both pre-Microsoft and post-Microsoft.

My main issues with the proposed settlement are:

1. Does not address non-commercial or open source usage of Microsoft technologies. Specifically it excludes anything that is does not have a viable "commercial" entity.

How does one measure this? Who is to say what is or isn't viable? Under the proposed settlement, Microsoft would have the ability to exclude much of the development efforts at Universities, non-profit organizations, and small businesses simply by saying that these are not legitimate or viable. At that point, these Universities or non-profit entities would need to file a complaint with the oversight group which would undoubtedly take considerable resources and efforts. Many of these organizations could not afford to undertake such efforts.

To limit the access to Microsoft's APIs, etc. in such a manner creates a divide that many would not or could not cross.

I urge you to eliminate this loophole that would allow Microsoft to exclude a significant portion of the information technology community.

Equal access needs to be assured, regardless of whether it's an individual person, a non-profit organization, a University or a for-profit organization.

2. Does not address harm caused by Microsoft's past abuse of monopolistic practices.

Their ability to fund economically unfeasible products

or investments -- some software related, others not related at all to software, is tremendous.

A prime example is their investment in the new gaming system X-Box... depending upon which analyst you read, estimation is that this product will not even begin to make money until late-2004, perhaps 2005. This is a loss-leader designed to further their business goals in a new market but utilizing capital obtained via monopoly power in other market segments.

Another example is their investment / "partnership" with customers with the ultimate outcome of locking in their products / technology use with these customers.

This has been accomplished in several ways including the investment in target organization, outright purchase of target organization or significant product discounts beyond normal levels to similarly sized organizations.

The only way that Microsoft has been able to do this is by using money (capital) obtained via their monopolist practices.

The proposed settlement continues to allow Microsoft to enjoy the fruits of their criminal activities, so far as to even allow Microsoft to be insulated against market forces due to their diversification. Had Microsoft not invested in nor used money obtained via monopolistic practices, their ability to maintain a monopoly may have been address by the market itself.

I urge you to either require Microsoft to divest holdings in customers, business partners, etc. or place them into a separately managed holding company that is the equivalent of a blind-trust. The ability of Microsoft to continue to utilize these tainted assets is great.

I further urge you to seek punitive damages by way of divestiture to address the harm caused my Microsoft's abuse of monopoly powers.

3. The duration of the settlement is too short a period of time.

Based upon my reading of the documents, the settlement could expire in as little as 5 years, and at most 8 years.

My concern is that Microsoft will wait things out, then return to their usual tactics once oversight has been eliminated. The other part of my concern is that Microsoft reduces their aggressiveness to a point, and then frustrates the oversight group for 8 years, effectively distracting and tying up the oversight group with argument upon argument, issue upon issue -- effectively outlasting them via appeals, taking things back to court, etc.

4. No specific penalties for non-performance or violation.

Most contracts I read tend to have some form of penalties for non-performance or breach written into them. I don't see any of that in the proposed settlement. Based upon this, Microsoft could easily continue to violate the settlement and fight any attempts at punishment for many years to come.

I think certain minimum penalties need to be spelled out should Microsoft even appear ("appearance of impropriety") to violate the settlement terms, not obey the oversight group, and any other US laws for that matter.

These penalties could be as simple as the term of the settlement / oversight is extended to 10 years beyond the date of the infraction. It might also include monetary or other penalties such as breaking Microsoft into 3 or 4 separate companies is avoided initially but should Microsoft violate the terms of the settlement, then they consent to being broken apart into separate companies.

Without penalties, I am concerned that Microsoft will continue abuses, simply writing off the oversight and annoyances because there is no incentive to do otherwise.

Respectfully submitted,

David B. Pickens

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